

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Confirmation No.: **7651**

Steven A. Shaya et al.

Serial No.: **09/981,516**

Group Art Unit: **3627**

Filing Date: **October 17, 2001**

Examiner: **Thein, Maria Teresa T.**

For: **INTELLIGENT PERFORMANCE-BASED PRODUCT
RECOMMENDATION SYSTEM**

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPELLANT'S REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

This reply brief is being filed in response to the Examiner's Answer mailed November 16, 2007, and in further support of Appellant's appeal from the rejections of claims 1-29 and 103 in the Final Rejection mailed 11/02/2006. A Notice of Appeal was filed on 02/02/2007 and an Appeal Brief was filed April 2, 2007 (and resubmitted August 13, 2007).

In the Examiner's Answer, the Examiner maintained the rejection of claims 28 and 29 as allegedly being obvious over Herz in view of Wilmott and rebutted Appellant's arguments that Wilmott's §102(e) date is after the priority date of this application. Upon reconsideration, Appellant would like to withdraw the arguments in Section 4 of the Argument section of Appellant's Appeal Brief. In particular, Appellant no longer maintains its argument that Wilmott's §102(e) date is after the priority date of this application.

Appellant also would like to withdraw the arguments in Section 5 of the Argument section of Appellant's Appeal Brief. Appellant notes that it has separately argued the merits of dependent claims 2-4 in Section 3 of the Arguments section of Appellant's Appeal Brief and that, accordingly, Appellant has already separately argued the merits of claims 2-4.

Claims 2-4 do not stand or fall with claim 1. Reversal of the rejection of claims 2-4 under 35 U.S.C. §103(a) is solicited.

Appellant further would like to withdraw the arguments in Section 5 of the Argument section of Appellant's Appeal Brief in that dependent claims 28-29 also are believed to be separately patentable and do not stand or fall with independent claim 1 from which these claims depend. In particular, Appellant submits that the Examiner erred in rejecting claim 28 in that neither Herz nor Wilmott teaches "generating a set of individualized product recommendations from a plurality of skin-care products" as claimed in claim 28. The Examiner alleges in the Final Rejection that Wilmott teaches such a feature at column 9, lines 46 and 60, and in Figures X3A-X3C and X2. However, upon further reflection, the Examiner is mistaken. Wilmott does not teach "generating a set of individualized product recommendations from a plurality of skin-care products." Instead, Wilmott teaches that a kiosk may be used to collect a customer's definition of a custom skin-care product and that a print-out containing a customized formulation for the customer may be generated by the kiosk for presentation by the customer to a sales clerk "who will mix the formulation in accordance with the printout" (Wilmott, column 9, lines 42-65). Thus, Wilmott teaches the generation of a customized formulation – not "individualized product recommendations" for pre-existing skin-care products as the Examiner alleges.

For at least these reasons, the rejection of claims 28-29 as unpatentable as obvious over Herz and Wilmott is improper. Claims 28-29 are separately patentable. Reversal of the rejection of claims 28-29 under 35 U.S.C. §103(a) is solicited.

CONCLUSION

For the reasons stated in Appellant's Appeal Brief and above in this Reply Brief, reversal of all rejections and allowance of claims 1-29 and 103 are requested.

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